THE HIGH OF UTTARANCAL AT NAINITAL.

Writ Petition No. 1254 of 2004 (M/S)

Smt. Beni Devi wife of late Gang Ram,
Master Nirmal Kumar minor son of lat Ganga Ram
Through his natural guardian and mother Smt. Beni Devi
Both residents of village Chaupata, Tehsil and
District Champawat.

…….. **Petitioners.**

Versus

1. District Judge/M.A.C.T. Champawat.
2. Ramesh Kumar son of Sri Roop Singh,
   Resident of Naul Tukaran, P.O. Dhaun Shiling,
   Tehsil and District Champawat.
3. The New India Insurance Company Ltd.
   Through its Senior Divisional Manager,
   Senior Divisional Office Haldwani (Nainital).

…… **Respondents.**

Mr. Yogesh Pande, Advocate, learned counsel for the petitioners.
Learned Standing Counsel for the respondent no. 1.
Sri Rajesh Joshi, Adv., holding brief of Sri T.A. Khan, learned for the respondent no. 3.

Dated March 27, 2006
PC: (Hon'ble B.S. Verma, J.)

Heard learned counsel.

By means of this writ petition, the petitioner has prayed for a writ, order or direction in the nature of certiorari quashing the impugned order dated 27.10.2004 passed by the respondent no.1 in Misc. Application No. 32 of 2004 arising out of Motor Accident Claim Petition No. 46 of 2002, Smt. Beni Devi Vs. Ramesh Kumar and others, whereby the leaned Tribunal/District Judge has ordered for deposit of amount of Rs. 4,43,475/- along with up-to date interest accruing on F.D.R. No. 063401 in the name of the petitioner Beni Devi in the Term Deposit account with a provision for making monthly payment of interest accrued thereon to the petitioner.

Relevant facts are that the Motor Accident Claim Petition No. 46 of 2002 Smt. Beni Devi Vs. Ramesh Kumar and others was decide on 31.5-2003 by the Motor Accident Claims Tribunal and out of the total awarded sum of Rs. 4,97,600/-,

amount of Rs. 50,000/- was ordered to be paid in cash to claimant no. 1 Beni Devi and Rs. 50,000/- was ordered to kept in the F.D.R. in the name of minor Nirmal Kumar through his mother for the period the minor attains majority and for rest of the amount, it was ordered that the same be deposited in some nationalised Bank in the name of the petitioner. In compliance with the said order, amount of Rs. 4,43,475/- was kept for a term of one year in Pithoragarh Kshettriya Gramin Bank Champawat in the name of the petitioner vide F.D.R. No. 063401. It appears that after expiry of the period of one year, the claimant Beni Devi moved application for release of the entire amount of F.D.R. opened in her name and on her application, the impugned order passed. Aggrieved, the petitioner has come up in this writ petition.

The learned counsel for the petitioner has contended that the impugned order of the learned Tribunal directing deposit of compensation payable to the petitioner in fixed deposit was erroneous. In support of his submission, the learned counsel has placed reliance in the judgment of the Apex Court in the case of ***H.S. Ahammed Hussain and another Vs. Irfan Ahamed and another reported in (2002)6 Supreme Court Cases, page 52***, Where in was observed in paragraph no. 8 that “In the facts and circumstances of the present case, we are of the view that the amount of compensation awarded in favour of the mothers should not be kept in fixed deposit in nationalized bank.”

A bare perusal of the order dated 31.5.2003 passed by the learned Tribunal in Motor Accident Claim Petition No. 46 of 2002, Beni Devi and another Vs. Ramesh Kumar and another goes to show that the Motor Accident Claims Tribunal Champawat has decreed the claim petition for compensation of Rs. 4,97,600/- along with interest @ 10% per annum from 12-8-2002 till the date of payment. The learned Tribunal has found the widow and minor son of the deceased to be entitled for the compensation amount, but the Tribunal has ordered that out of the awarded compensation, amount

of Rs. 50,000/- shall be deposited in the name of the minor son in term deposit scheme till he attains majority and rest of the amount of compensation was awarded in favour of the window.

In the course of arguments, the learned counsel for the petitioners, Sri Yogesh Pande, has made a submission that the petitioner will have no objection in case the half of the total amount under the award is deposited in the Fixed Deposit in some nationalized Bank in the name of the minor Nirmal Kumar minor son of the deceased under the guardianship of his mother Smt. Beni Devi till the period the minor attains majority and the petitioner Smt. Beni Devi be allowed to withdraw the yearly interest accrued thereon to be spent exclusively on the maintenance and welfare of the minor Nirmal Kumar and the balance, if any, be paid in cash to the petitioner Beni Devi. The prayer is innocuous.

Accordingly, the Motor Accident Claims Tribunal Champawat is directed to get the half of the awarded amount after adjusting the amount of Rs. 50,000/- already deposited in the name of the minor, deposited in the name of the minor Nirmal Kumar, minor son of deceased Gang Ram, in some Fixed Deposit Scheme of a natioanlised bank under the guardianship of this mother Smt. Beni Devi and Smt. Beni Devi shall be entitled to withdraw the yearly interest accrued thereon from the bank concerned to be spent in the maintenance and welfare of the minor Nirmal Kumar till he attains majority. The record shows that vide interim order dated 1.12.2004, 50% of the amount already deposited by the Insurance Company was ordered to be released in favour of the claimant no. 1 Beni Devi. If any amount remains in excess, the same be paid to the petitioner no. 1 Smt. Beni Devi in cash.

With the aforesaid observations, the writ petition is disposed of finally.

(B.S. Verma, J.)

RCP